

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TALECRIS BIOTHERAPEUTICS, INC., and)	
BAYER HEALTHCARE LLC,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 05-349-GMS
)	
BAXTER INTERNATIONAL INC., and)	
BAXTER HEALTHCARE CORPORATION,)	Jury Trial Demanded
)	
Defendants.)	REDACTED VERSION DI 357
)	

BAXTER HEALTHCARE CORPORATION,)	
)	
Counterclaimant,)	
)	
v.)	
)	
TALECRIS BIOTHERAPEUTICS, INC., and)	
BAYER HEALTHCARE LLC,)	
)	
Counterdefendants.)	
)	

**PLAINTIFFS' MOTION TO EXCLUDE DR. TERENCE SNAPE'S
NON-INFRINGEMENT OPINIONS**

Bradford J. Badke, Esquire
 Gabrielle Ciuffreda, Esquire
 ROPES & GRAY LLP
 1211 Avenue of the Americas
 New York, NY 10036
Of Counsel for Counterclaim Defendant
Bayer Healthcare LLC

Redacted Version Filed: July 5, 2007
 Date: June 27, 2007

Jeffrey B. Bove (#998)
 Mary W. Bourke (#2356)
 Mark E. Freeman (#4257)
 Jaclyn M. Mason (#4737)
 Dana K. Hammond (#4869)
 Christopher E. Jeffers (*pro hac vice*)
 CONNOLLY BOVE LODGE & HUTZ LLP
 1007 North Orange Street
 P.O. Box 2207
 Wilmington, DE 19899-2207
 (302) 658-9141
*Attorneys for Plaintiffs and
Counterclaim Defendants*

Plaintiffs and Counterclaim Defendants Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC (collectively, "Plaintiffs") respectfully request leave to file the attached Motion to Exclude Dr. Snape's Noninfringement Opinions (hereinafter the "Motion"), precluding Defendants Baxter International Inc. and Baxter Healthcare Corporation (collectively, "Baxter") from calling Dr. Terrence Snape as a witness at trial to provide opinions related to Baxter's alleged non-infringement of U.S. Patent No. 6,686,191 ("the '191 patent"). (Ex. A.)

Statement of Compliance with D. Del. LR. 7.1.1

On June 26, 2007, Plaintiffs attempted to reach an agreement with Baxter regarding the subject matter of this motion, but were unable to do so. (Mason Dec.¹, Ex. 1.)

Plaintiffs request leave to file the Motion based on the parties' discussions with the Court and the Court's guidance during the June 14, 2007 Pretrial Conference. Specifically, the Court stated that "it seems reasonable for [Plaintiffs] to move" (D.I. 353 at 29:18-9) on the issue of whether Baxter is "entitled to bring Dr. Snape to trial to opine on noninfringement" (*id.* at 28:20-24) in light of the Court's Order granting Plaintiffs' Motion *in Limine* No. 4 (*id.* at 27:5-21) once Baxter had "an opportunity to consider the impact of the Court's ruling" (*id.* at 29:20-21).

For these reasons, and for the reasons set forth in the attached Motion, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file the Motion.

A proposed form of Order is attached hereto as Exhibit B.

¹ The "Mason Dec." is the Declaration of Jaclyn M. Mason in Support of Plaintiffs' Motion for Leave to File Plaintiffs' Motion to Exclude Dr. Terrence Snape's Noninfringement Opinions, filed concurrently herewith.

Date: June 27, 2007

Respectfully submitted,

Bradford J. Badke, Esquire
Gabrielle Ciuffreda, Esquire
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036
Of Counsel for Counterclaim Defendant
Bayer Healthcare LLC

547418

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)
Mary W. Bourke (#2356)
Mark E. Freeman (#4257)
Jaclyn M. Mason (#4737)
Dana K. Hammond (#4869)
Christopher E. Jeffers (*pro hac vice*)
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street, P.O. Box 2207
Wilmington, DE 19899-2207
(302) 658-9141
Attorneys for Plaintiffs and
Counterclaim Defendants

CERTIFICATE OF SERVICE

I hereby certify on this 27th day of June, 2007 I electronically filed the foregoing **Plaintiffs' Motion for Leave to File Plaintiffs' Motion to Exclude Dr. Terence Snape's Non-Infringement Opinions** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smSPAETH@townsend.com
---	--

I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on June 27, 2007.

<u>Via Hand Delivery and E-Mail</u>	<u>Via Federal Express and E-Mail</u>
Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smSPAETH@townsend.com

/s/ Jeffrey B. Bove

Jeffrey B. Bove (#998)
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 North Orange Street
Wilmington, DE 19801
Telephone: (302) 658-9141
jbove@cblh.com
Attorneys for Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC

Bradford J. Badke
Gabrielle Ciuffreda
ROPES & GRAY LLP
1251 Avenue of the Americas
New York, NY 10020-1105
(212) 596-9000
Attorneys for Bayer Healthcare LLC